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REGION III

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In the Matter of:

Delaware Department of Transportation  
Dover, Delaware

Respondent.

ADMINISTRATIVE ORDER  
ON CONSENT

Docket No. CWA-03-2014-0232DN

**I. PRELIMINARY STATEMENT and STATUTORY AUTHORITY**

1. EPA has made the following findings of fact and issues this Administrative Order on Consent (Consent Order) pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) under Section 309(a) of the Clean Water Act (CWA or Act), 33 U.S.C. § 1319(a). This authority has been delegated by the Administrator to the Regional Administrator of EPA Region III, and further delegated to the Director, Water Protection Division, Region III.

2. Section 309 of the Act, 33 U.S.C. § 1319(a), provides, *inter alia*, that whenever on the basis of any information available to him the Administrator finds that any person is in violation of any permit condition or limitation implementing certain CWA sections in a permit issued under Section 402 of the Act, 33 U.S.C. § 1342, he shall issue an Order requiring such person to comply with such section or requirement.

**II. FINDINGS of FACT and CONCLUSIONS OF LAW**

3. Delaware Department of Transportation (DelDOT), or "Respondent", is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

4. At all times relevant to this Complaint, Respondent has owned and/or operated a municipal separate storm sewer system ("MS4") as that term is defined in 40 C.F.R. § 122.26(b)(8).

5. Respondent's MS4 is located within the geographic boundaries of New Castle, County.

6. New Castle County encompasses a total area of approximately 272,826 acres. According to the County, its population is estimated at 546,076 people.

7. Stormwater from DelDOT's MS4 drains to the numerous creeks and small tributaries of the Delaware Bay, Chesapeake Bay and Piedmont watersheds, which are considered "waters of the United States" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7); 40 C.F.R. § 232.2; 40 C.F.R. § 122.2.

8. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342.

9. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit.

10. "Discharge of a pollutant" includes "any addition of any pollutant or combination of pollutants to waters of the United States from any point source." 40 C.F.R. § 122.2.

11. "Storm water" is defined as "storm water runoff, snow melt runoff and surface runoff and drainage." 40 C.F.R. § 122.26(b)(13).

12. The term "municipal separate storm sewer system" ("MS4") includes, "a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States." 40 C.F.R. § 122.26(b)(8)(i).

13. An NPDES permit is required for discharges from an MS4 serving a population of 250,000 or more, Section 402(p)(2)(C) of the Act, 33 U.S.C. § 1342(p)(2)(C); 40 C.F.R. § 122.26(a), 40 C.F.R. § 122.21.

14. Respondent's MS4 serves a population of at least 250,000 people within New Castle County.

15. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Delaware Department of Natural Resources and Environmental Control ("DNREC") to issue NPDES permits on April 1, 1974.

16. DNREC issued to Respondent an NPDES MS4 Discharge Permit No. DE 0051071 which became effective on May 1, 2001 (hereinafter the "MS4 Permit").

17. The expiration date of the MS4 Permit was May 1, 2006; however, the MS4 Permit had been administratively extended to 2013 pending a final decision on the renewal application.

18. An NPDES permit is also required for discharges of storm water associated with industrial activity, as well as for stormwater discharges which DNREC or EPA determine to be a significant contributor of pollutants or that contributes to a violation of a water quality standard. Section 402(p)(2) of the Act, 33 U.S.C. § 1342(p)(2); 40 C.F.R. § 122.26(a), 40 C.F.R. § 122.21.

19. On April 18 and 19, 2013 representatives of EPA conducted an inspection of DelDOT's MS4 program implementation (the MS4 Inspection") in New Castle County.

20. In August 2013, EPA issued Delaware Department of Transportation Municipal Separate Storm Sewer System (MS4) Program Inspection Report (Inspection Report), which included, in addition to general information regarding the DelDOT's MS4 program and history, ten(10) observations regarding the DelDOT's MS4 Program related to the requirements of MS4 Permit (DE 0051071, effective May 1, 2001). The Inspection Report also included seven (7) appendices (exhibit log, photo log, document log, etc.).

21. DelDOT received a copy of the Inspection Report which was sent by mail on September 11, 2013. DelDOT prepared and submitted a response to EPA on September 30, 2013.

22. Based upon the April 18 and 19, 2013 inspection, EPA identified several categories of violations, among the ten (10) observations, which it has concluded were violations of the MS4 Permit and Section 301 of the Act, 33 U.S.C. § 1311. This Consent Order addresses these categories and directs DelDOT to take the corrective action described below to comply with MS4 Permit (DE 0051071, effective May 1, 2001).

23. Part II. of the MS4 Permit requires DelDOT to develop a comprehensive storm water pollution prevention and management program (SWPP&MP) which shall be implemented in accordance with 402(p)(3)(B) of the CWA and the federal NPDES storm water regulations in

40 CFR Part 122.26.

24. Part II.A.3 of the MS4 Permit requires that DelDOT “shall operate and maintain public streets, roads, and highways, in such a manner to reduce, to the maximum extent practicable, the discharge of pollutants. This includes implementing programs...to reduce contaminated storm runoff (i.e., manage and minimize any transport of pollutants) associated with road repair and maintenance activities (i.e., practices to address spill prevention, material management and good housekeeping).” Section XII.A. of the SWPP&MP requires DelDOT to “Develop SWPPPs for all maintenance facilities as per General Permit for Industrial Activities and... Update Pollution Prevention Plans (PPPs) as necessary, including updated site maps.”

25. The EPA inspection team inspected several DelDOT maintenance facilities as part of their inspection. SWPPPs were present at all of the maintenance facilities inspected and the inspection team noted that the SWPPPs for the Middletown, Odessa, Bear and Talley maintenance facilities had last been updated in 2003 even though several changes were made to these facilities and personnel identified in the SWPPP often no longer worked within the maintenance facilities.

26. After the MS4 Inspection, DelDOT submitted updated SWPPPs for the Middletown, Odessa, Bear and Talley maintenance facilities to DNREC on December 20, 2013.

27. Part II.A.3 of the MS4 Permit requires that DelDOT “shall operate and maintain public streets, roads, and highways, in such a manner to reduce, to the maximum extent practicable, the discharge of pollutants. This includes implementing programs... to reduce contaminated storm runoff (i.e., manage and minimize any transport of pollutants) associated with road repair and maintenance activities (i.e., practices to address spill prevention, material management and good housekeeping).”

28. In 2005, DNREC approved DelDOT’s treatment train for its vehicle wash facilities at several DelDOT maintenance yards. At the Kiamensi maintenance yard, washwater is intended to be treated for pollutants associated with oil via a storm drain inlet insert. However, the EPA inspectors found that both washwater and stormwater could easily circumvent the storm drain inlet insert (photograph 22, Appendix 5) and discharge untreated washwater into the stormwater pond and eventually surface waters.

29. Part II.A.3 of the MS4 Permit requires that DelDOT “shall operate and maintain public streets, roads, and highways, in such a manner to reduce, to the maximum extent practicable, the discharge of pollutants. This includes implementing programs, ... to reduce contaminated storm runoff (i.e., manage and minimize any transport of pollutants) associated with road repair and maintenance activities (i.e., practices to address spill prevention, material management and good housekeeping).” Appendix H of the SWPP&MP, Salt Management Plan

for Maintenance Yards states in Section 2.2 "Solid salt stockpiles must not be exposed to rain or snow."

30. During EPA's inspection of the salt storage barn at the Middletown facility the inspectors found salt spilling from the main door and onto a partially paved apron (See Photograph 32 in Appendix 5) which was not under cover and therefore exposed to rain and snow.

31. II.A.9.c of the MS4 permit requires DelDOT to conduct a "prioritized inspection of construction sites and enforcement of control measures." Section VII.A of the SWPP&MP requires the "installation and maintenance of all BMPs during construction activities."

32. Construction site inspection reports reviewed by the EPA inspection team indicate that many of the deficiencies identified in construction site inspections took approximately a month or more to be resolved, and recurred repeatedly throughout the life of the construction site.

33. Based upon the MS4 Inspection, EPA has concluded that Respondent's failures to: 1) ensure that all practicable measures to reduce pollutants from maintenance facilities were taken; 2) update SWPPPs at its maintenance facilities when necessary; 3) ensure the proper operation of treatment facilities; and 4) ensure timely enforcement of control measures; violate the MS4 Permit and Section 301 of the Act, 33 U.S.C. § 1311.

### **III. ORDER**

AND NOW, this 15th day of August, 2014, pursuant to section 309(a) of the Act, 33 U.S.C. § 1319(a), having taken into account the seriousness of the violations and any good faith efforts by Respondent to comply with section 301(a) of the Act, Respondent is hereby ORDERED, pursuant to Section 309(a) to do the following:

34. Respondent shall take all actions necessary to comply with its current MS4 Permit, including:

- a. Develop and implement a plan within 6 months of the effective date of this Order to come into compliance with its current permit, and submit this plan to EPA for comment.
- b. Reinstall the metal strip in the throat of the catch basin at the Kiamensi maintenance yard by August 31, 2014; revise its current "Statewide Vehicle Wash Water Practices for DelDOT Maintenance Yards" by May 2015, and submit this revision to DNREC for approval following its revision; and submit to EPA evidence that these events occurred within four weeks of each completion.
- c. Install a physical barrier at the salt storage barn at the Middletown facility to prevent salt from exiting the main door, with installation to be completed by

August 31, 2014. Submit evidence of this completion to EPA within four weeks of its completion.

35. All documents required by Paragraph 34 of this Section shall be accompanied by a certification signed by a responsible municipal officer, as defined in 40 CFR § 122.22(d), that reads as follows:

*I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*

Signed \_\_\_\_\_  
Title \_\_\_\_\_

All documents required herein shall be submitted to:

Peter Gold  
Enforcement Officer  
NPDES Enforcement Branch  
Mail Code (3WP42)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

#### **IV. GENERAL PROVISIONS**

36. Issuance of this Consent Order is intended to address the violations described herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. Further, EPA reserves any existing rights and remedies available to it under the CWA, 33 U.S.C. §1311, et seq., the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction. Further, EPA reserves any rights and remedies available to it under the CWA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this Consent Order, following its effective date (as defined below).

37. This Consent Order does not constitute a waiver or modification of the terms or conditions of DelDOT's MS4 permit. Compliance with the terms and conditions of this Order does not relieve the Respondent of its obligations to comply with any applicable federal, state, or local law or regulation.

38. For the purposes of this proceeding, DelDOT neither admits nor denies the factual allegations and conclusions of law set forth in this Consent Order.

39. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order on Consent, including any right of judicial review pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

40. DelDOT has made significant progress in all aspects of its NPDES program since the MS4 Inspection. This settlement is intended to encourage continued improvements commensurate with the goals of a quality assurance audit.

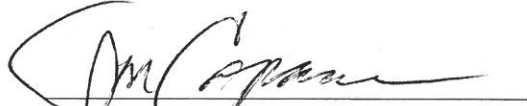
41. By entering into this Consent Order, DelDOT does not admit any liability for the civil claims alleged herein.

**V. EFFECTIVE DATE**

This ORDER is effective after receipt by Respondent of a fully executed document.

SO ORDERED:

Date: 8/15/2014

  
Jon Capacasa  
Director, Water Protection Division  
U.S. EPA Region III

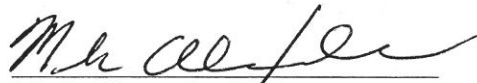
AGREED TO:

For Delaware Department of Transportation:

Date: 8/01/14

  
Robert McCleary, P.E.  
Chief Engineer

Date: 8/5/14

  
Mark Alexander, P.E.  
Director of Maintenance and Operations

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**DELAWARE DEPARTMENT OF TRANSPORTATION  
MUNICIPAL SEPARATE STORM  
SEWER SYSTEM (MS4) PROGRAM  
INSPECTION REPORT**

**FINAL REPORT  
AUGUST 22, 2013**

**Office of Compliance and Enforcement  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460**

**U.S. Environmental Protection Agency, Region III  
Water Protection Division  
Office of NPDES Enforcement (3WP42)  
1650 Arch Street  
Philadelphia, PA 19103**

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## EXECUTIVE SUMMARY

From April 18 through 19, 2013, a compliance inspection team, comprising staff from the U.S. Environmental Protection Agency (EPA) Region 3, Delaware Department of Natural Resources and Environmental Control, and EPA's contractor, Eastern Research Group, Inc. (ERG), inspected Delaware Department of Transportation's (DelDOT) municipal separate storm sewer system (MS4) program. EPA visited the Chapman and Kiamensi Maintenance Yards for a second time on July 24, 2013.

The purpose of this inspection was to obtain information that will assist EPA in assessing DelDOT's compliance with the requirements of their Delaware Pollution Discharge Elimination System Permit (DE0051071) and the implementation of its current MS4 Program.

Based on the information obtained and reviewed, EPA's compliance inspection team made several observations concerning DelDOT's MS4 program related to the specific permit requirements evaluated. Table 1 below summarizes the permit requirements and the observations made by the inspection team.

**Table 1. Summary of Permit Requirements and Inspection Observations**

Observations	
<b>Part 2.A.1.a– Structural Controls</b>	<b>Observation 1:</b> DelDOT is not conducting annual inspections of all publicly-owned stormwater best management practices (BMPs).
<b>Part 2.A.3 – Roadways</b>	<b>Observation 2:</b> DelDOT's stormwater pollution prevention plan (SWPPP) and Spill Prevention, Control and Countermeasures (SPCC) plan documentation was outdated or unavailable at some of its maintenance facilities and yards.
	<b>Observation 3:</b> The EPA inspection team observed practices that did not address spill prevention, materials management, and good housekeeping at the DelDOT maintenance yards and facilities.
	<b>Observation 4:</b> The EPA inspection team observed vehicle/equipment wash water practices at five (5) of the DelDOT maintenance yards designed to discharge waste wash water through treatment trains into stormwater BMPs and the stormwater collection system.
	<b>Observation 5:</b> The EPA inspection team observed salt outside of the salt storage barn at the Middletown facility.
	<b>Observation 6:</b> The EPA inspection team observed an unstabilized stockpile, present since January 2013, at the Bear facility.
<b>Part 2.A.6 – Illicit Discharges and Improper Disposal</b>	<b>Observation 7:</b> DelDOT has not identified the location where its Bear facility stormwater collection pit discharges.
	<b>Observation 8:</b> DelDOT is not conducting routine annual dry and wet weather outfall screenings.

**Table 1. Summary of Permit Requirements and Inspection Observations**

Observations	
<b>Part 2.A.9 – Construction Site Runoff</b>	<p><b>Observation 9:</b> DelDOT documentation identified repeated erosion and sediment control issues at its construction sites. The EPA inspection team observed erosion and sediment control issues on the DelDOT construction sites during the inspection.</p> <p><b>Observation 10:</b> DelDOT does not provide training to construction site operators.</p>

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## INTRODUCTION

From April 18 through 19, 2013, a compliance inspection team, comprising staff from the U.S. Environmental Protection Agency (EPA) Region 3, Delaware Department of Natural Resources and Environmental Control (DNREC), and EPA's contractor, Eastern Research Group, Inc. (ERG), inspected Delaware Department of Transportation's (DelDOT) municipal separate storm sewer system (MS4) program. EPA visited the Chapman and Kiamensi Maintenance Yards for a second time on July 24, 2013. Discharges from DelDOT's MS4 are regulated by Delaware Pollution Discharge Elimination System Permit (DE0051071), the Permit is included in Appendix 1.

The purpose of this inspection was to obtain information that will assist EPA in assessing DelDOT's compliance with the requirements of the Permit, as well as the implementation status of its current MS4 Program. The inspection schedule is presented in Appendix 2.

The EPA inspection team obtained its information through a series of interviews with representatives from DelDOT, along with a series of site visits, record reviews, and field verification activities. The primary representatives involved in the inspection were the following:

DelDOT:	<b>Maintenance &amp; Operations Division</b> Mr. Randy Cole, Environmental Program Manager II Ms. LaTonya Gilliam, NPDES Engineer Mr. Brian Urbanek, Assistant Director Statewide Support Services Ms. Marianne Walch, Environmental Scientist IV <b>Division of Transportation Solutions (DOTS)</b> <b>NPDES Construction Permit Compliance</b> Mr. Vince Davis, Stormwater Engineer Mr. Hugo Dreibelbis, Team Support Manager Ms. Mary Hamilton, Environmental Compliance Supervisor Mr. Rob McCleary, Assistant Director Engineering Support <b>Administration of DelDOT Construction Contracts</b> Mr. Herb Monsalud, Project Supervisor, North II Construction
KCI Technologies:	Mr. Chris Bolton, Environmental Scientist Mr. Matthew Ortynsky, Environmental Scientist Mr. Bruce Thompson, Program Manager
AECOM:	Mr. Scott Keefer, Construction Services
URS:	Mr. Jim D'Orazio, Senior Field Technician Mr. Dave Lafferty, Field Technician
EPA Representatives:	Mr. Chuck Schadel, Enforcement Officer Mr. Pete Gold, Enforcement Officer Ms. Kyle Zieba, Enforcement Officer Mr. Andy Dinsmore, Enforcement Officer
Delaware DNREC	<b>Surface Water Discharges Section</b>

Representatives: Ms. Jennifer Roushey, Program Manager I  
Mr. Bryan Ashby, Program Manager  
Ms. Sandra Goodrow, Environmental Scientist IV  
Mr. Bill Tanner, Environmental Scientist III  
Mr. Beau Croll, Environmental Scientist  
**Sediment and Storm water Program**  
Ms. Jamie Rutherford, Environmental Program Manager  
Ms. Cheryl Gmuer, Environmental Program Manager I  
**Division of Watershed Stewardship (WSS)**  
Mr. Nathan Zimmerman, Construction Reviewer

EPA Contractors: Ms. Kava Kasturi, ERG  
Ms. Daisy Wang, ERG  
Mr. Mark Briggs, ERG  
Ms. Kathleen Wu, ERG

For a complete list of all inspection participants, please refer to the sign-in sheets in Appendix 3.

During the inspection, the Inspection Team obtained documentation regarding compliance with the Permit. Pertinent information may have been obtained prior, and/or after meeting with DelDOT staff during the physical inspection, and is presented in this report as observations. The presentation of inspection observations in this report does not constitute a formal compliance determination or notice of violation. All referenced documentation is provided in Appendix 4 and referenced photographs are provided in Appendix 5. A complete list of documents obtained is provided as a Document Log in Appendix 6. All documents obtained and all photographs taken during the inspection are on a CD in the file.

The report identifies Permit requirements with specific sections cited and observations made during the inspection. The format of the report follows the numeric system used in the Permit and is sequential. Sections of the permit are restated with observations about those requirements listed below.

Additionally, Appendix 7 provides compliance assistance and/or suggestions for program improvement.

## **DELAWARE DEPARTMENT OF TRANSPORTATION BACKGROUND**

At the time of EPA's inspection, DelDOT was operating under its NPDES permit which became effective on May 1, 2001 and expired on April 30, 2006. DNREC had not issued a new permit to DelDOT thereby administratively extending the 2001 permit until May 7, 2013 when a new permit was issued by DNREC.

DelDOT is co-permitted with New Castle County (the county), and the permit covers all portions of the MS4 located in the county. The county encompasses approximately 272,826 acres of land, and is bordered on the west by Maryland, on the north by Pennsylvania, on the east by the Delaware River, and on the south by Kent County. The 2012 total population of the county is estimated to be 546,076 people. Within the county, DelDOT owns and operates a storm drain

network of approximately 5,000-miles with an estimated 50,000 storm drain inlets<sup>1</sup>. The MS4 discharges into the Delaware Bay and the Chesapeake Bay watersheds. The State of Delaware has four major watersheds, which are further subdivided into 45 smaller subwatersheds<sup>2</sup>. The county includes three major watersheds (the Piedmont, the Delaware Bay, and the Chesapeake), which include approximately 14 subwatersheds<sup>3</sup>.

Currently DelDOT has approximately 9 staff to implement the MS4 program. Additionally, DelDOT also uses the services of contractors, including KCI Technologies Inc. (KCI), AECOM, and URS Corporation. DelDOT was appropriated \$2.07 million in fiscal year 2011 to implement NPDES activities.

## **INFORMATION OBTAINED RELATIVE TO PERMIT REQUIREMENTS**

Overcast conditions were experienced throughout most of the inspection. Weather history reports indicated that there was 0.20 inches of rain in New Castle County, Delaware during the field work component of the inspection. In addition, the weather history reports indicated no precipitation in the three days prior to the inspection and approximately 0.85 inches had fallen in the three days following the inspection<sup>4</sup>.

### **Part 2: Storm Water Pollution Prevention and Management Program (SWPP & MP)**

Part II of the NPDES permit requires each permittee to contribute to the implementation of a comprehensive stormwater pollution prevention and management plan. Part II states "...The storm water pollution prevention and management program ("SWPP&MP") shall include controls necessary to effectively prohibit the discharge into the municipal separate storm sewer system of materials other than storm water and to reduce the discharge of pollutants from/through the municipal separate storm sewer system to the maximum extent practicable ("MEP"). ... Implementation of the SWPP&MP may be achieved through participation with the other co-permittees, public agencies, or private entities in cooperative efforts to satisfy the requirements of Part II in lieu of creating duplicate program elements for each individual co-permittee. The SWPP&MP, taken as a whole, shall achieve the "effective prohibition of non-storm water discharges" and "MEP" standards from Section 402 (p)(3)(B) of the Act.

#### **Part 2.A.1.a: Structural Controls and Operation of the Storm Water Collection System**

The SWPP & MP shall be implemented in a manner consistent with the following requirements: Each co-permittee shall inspect, at least once during the term of this permit, its respective parts of the storm water collection and conveyance facilities. Each co-permittee shall also perform the necessary maintenance and repairs of its portion of the storm sewer system. The New Castle County Department of Special Services (the County) and DelDOT shall conduct more frequent inspections as specified here:

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<sup>1</sup> <http://www.deldot.gov/stormwater/pdfs/EstuaryNewsArticleFall2003.pdf>

<sup>2</sup> <http://www.deldot.gov/stormwater/watershed.shtml>

<sup>3</sup> <http://www.nccde.org/ncc-swnpdes/watershed.html>

<sup>4</sup> The precipitation data for DelDOT was downloaded from the National Oceanic and Atmospheric Administration's (NOAA) National Climatic Data Center (NCDC) – Climate Data Online (CDO) System on June 5, 2013 (<http://www.ncdc.noaa.gov/cdo-web/#t=secondTabLink>).

- (1) The County and DelDOT shall conduct annual inspections of all publicly owned storm water management ponds or basins and any structural BMPs or controls incorporated into their respective storm sewer systems.
- (3) The County and DelDOT shall continue to endeavor to respond to and to resolve any complaints about its storm water collection and conveyance facilities in a timely manner.

Observation 1: DelDOT is not conducting annual inspections of all publicly owned stormwater best management practices (BMPs). DelDOT has contracted with KCI to perform the BMP inspections. Since 2009, DelDOT and KCI have implemented a BMP grading system which assigns a grade of A, B, C, or D to the BMP after inspection each year. The A grade identifies that the BMP has no performance issues. The B grade identifies that the BMP needs minor routine maintenance. The C grade indicates the BMP needs major maintenance and the D grade indicates the BMP requires retrofit. After the year's BMP inspections are completed, KCI sends the inspection results to DelDOT. DelDOT then schedules and completes the maintenance, repair, and/or redesign work for all BMPs graded B, C, or D and provides KCI with the list of BMPs to inspect the next year. BMPs receiving an A or B letter grade during the year's inspections are inspected again the next year. DelDOT and KCI personnel stated that if a BMP received a C or D letter grade, DelDOT will inspect the BMP at least once prior to completing the work to identify any new issues and calculate design quantities needed for maintenance. The annual inspections by KCI are not conducted until after the work is completed since these BMPs will not assess as an "A" or "B" without the required maintenance (see Exhibit 1 in Appendix 4). After a C or D graded BMP is repaired, it is automatically assigned an A letter grade. DelDOT and KCI stated that the goal was to bring all BMPs to an A or B letter grade and then inspect all BMPs annually. As of 2012, DelDOT's BMP inventory included 308 BMPs. DelDOT has inspected all but one of their A and B-graded BMPs (excluding sand filters) in 2011 and all of their A and B-graded BMPs (excluding sand filters) in 2012 (see Exhibits 2 and 3 in Appendix 4). KCI personnel stated that all sand filters are inspected four times a year and the inspection documentation is stored separately from the MapViewer system, which stores documentation for all other BMP inspections. The EPA inspection team received the MapViewer system, however, sand filter inspection documentation was not provided to the EPA inspection team.

DelDOT stated budgetary restrictions prevented DelDOT from completing the required work on all BMPs receiving C and D grades each year. At the time of EPA's inspection, DelDOT stated they were still addressing BMPs graded C or D in 2009. Documentation containing BMP inspection grades from 2009 through 2012 showed that 106 BMPs were graded C and 2 BMPs were graded D in 2009 (see Exhibit 2 in Appendix 4). The documentation showed 71 of the C-graded BMPs had the necessary maintenance completed in either 2010 or 2011. Another 18 C-graded

BMPs had the necessary maintenance completed in 2012. Currently, 19 of the C and D-graded BMPs remain at their 2009 grade. Documentation provided after EPA's inspection showed that these BMPs are scheduled to be addressed in 2013 and work had already been completed for four of the 19 BMPs (see Exhibit 4 in Appendix 4).

Eight additional BMPs were initially graded a C in 2010 and remained at a C grade in 2011 and 2012. Documentation provided after EPA's inspection showed that all eight of the BMPs are scheduled to be addressed in 2013 and work had already been completed for one of the eight BMPs.

The EPA inspection team visited BMP #75, a biofiltration swale, on April 19, 2013. The BMP had received a C grade in 2009 and the major maintenance had not yet been completed as of EPA's inspection. The EPA inspection team observed the same issues identified in 2009, including stabilization and flow bypassing the check dam. Additionally, the EPA inspection team observed that erosion had occurred beyond the limit of the swale around fencing (see Photographs 1 and 2 in Appendix 5). At the time of the inspection, water was flowing from the swale into the eroded area beyond the limit of the swale and the fence was leaning. Water from the eroded area flowed onto a grassed area and then to a waterbody (see Photograph 3 in Appendix 5). The erosion did not extend to the waterbody.

DelDOT described its BMP inspection system in its annual reports which have been reviewed by Delaware DNREC. Delaware DNREC personnel stated that DelDOT has discussed the system with Delaware DNREC during regular meetings; however, no written documentation or approval of the system is available.

### **Part 2.A.3: Roadways**

The SWPP & MP shall be implemented in a manner consistent with the following requirements: The co-permittees shall operate and maintain public streets, roads, and highways, in such a manner to reduce, to the maximum extent practicable, the discharge of pollutants. This includes implementing effective programs to remove snow and ice; to manage roadway deicing, salting and sanding activities; to control litter; to maintain cleanliness of roadways (i.e., routine street sweeping) and to reduce contaminated storm runoff (i.e., manage and minimize any transport of pollutants) associated with road repair and maintenance activities (i.e., practices to address spill prevention, material management and good housekeeping). Section XII.A. of the SWPP&MP requires DelDOT to "Develop SWPPPs for all maintenance facilities as per General Permit for Industrial Activities and... Update Pollution Prevention Plans (PPPs) as necessary, including updated site maps." According to each of the SWPPPs provided by DelDOT for their maintenance facilities, "...the primary goal of the SWPPP will be to: 1) identify potential sources of pollutants that affect storm water discharges from the site; 2) Describe the practices that will be implemented to prevent or control the release of pollutants in storm water discharges; and 3) create an implementation schedule to ensure that the practices described in the SWPPP

are, in fact, executed, and to evaluate the plan's effectiveness in reducing the pollutant levels in storm water discharges."

Observation 2: During visits to DelDOT maintenance yards and facilities, the EPA inspection team observed stormwater pollution prevention plan (SWPPP) and Spill Prevention, Control and Countermeasures (SPCC) plan documentation that was outdated or unavailable.

On April 19, 2013, the EPA inspection team visited DelDOT's Middletown maintenance and storage facility located at 5369 Summit Bridge Road in Middletown, Delaware. According to information provided by DelDOT, both wet and dry weather quarterly inspections were last conducted at the Middletown facility in October 2012 (see Exhibit 5 in Appendix 4). The EPA inspection team observed the following during an on-site review of the SWPPP and SPCC plan:

- The SWPPP that was available at the Middletown facility during the EPA inspection had not been updated and certified since 2003 and none of the individuals listed in the SWPPP still worked at the Middletown facility. Following the EPA inspection, DelDOT updated the SWPPP (dated April 2013) and provided the updated SWPPP to EPA in July 2013 per EPA's request (see Exhibit 6 in Appendix 4).
- The site maps within the SWPPP that was on-site during the inspection were dated 2002 although changes have occurred at the facility since 2002, including installation of a vehicle/equipment wash rack.
- Quarterly storm water inspection reports were not included with the SWPPP and could not be located.
- A SPCC plan had been developed for the site due to the aboveground storage of fuel in excess of 1,320 gallons; however the SPCC plan had not been updated since 2007. SPCC plans reviews must be conducted every five years and the review documented per the requirements of 40 CFR Part 112.5(b).
- Comparing the site map provided as Drawing Number 3 in the April 2013 updated SWPPP with the 2013 Google Earth® map provided as Figure 2 in the April 2013 updated SWPPP (see Exhibit 6 in Appendix 4) indicates the 10,000-gallon diesel fuel storage tanks associated with the fueling station are not included on the site drawing.
- No employee training records regarding either the SWPPP or the SPCC plan were available for review.

On April 19, 2013 the EPA inspection team visited DelDOT's Odessa yard located at 427 Middletown-Odessa Road in Odessa, Delaware. DelDOT last conducted quarterly wet and dry weather inspections at the Odessa facility in December 2012. During the inspection, EPA noted that the SWPPP had not been updated since 2004, and the staff included in the

plan were not currently responsible for its implementation. Since the inspection, DelDOT has updated the SWPPP for the Odessa yard and provided the updated SWPPP to EPA (see Exhibit 7 in Appendix 4).

Also on April 19, 2013, the EPA inspection team visited DelDOT's Bear maintenance and storage facility located at 250 Bear-Christiana Road in Bear, Delaware. DelDOT's last quarterly wet and dry weather inspections of the Bear facility occurred in October and December 2012, respectively. The SWPPP, SPCC Plan, and training records were on site, however the SWPPP had not been updated since March 2003 and the person listed in the plan as responsible for stormwater management had retired in December 2012. The SPCC plan was dated 2007. SPCC plans reviews must be conducted every five years and the review documented per the requirements of 40 CFR Part 112.5(b). Since the inspection, DelDOT has updated the SWPPP for the Bear facility and provided the SWPPP to EPA (see Exhibit 8 in Appendix 4).

On April 19, 2013, the EPA inspection team visited DelDOT's Talley Maintenance Yard located in area 12 of New Castle County at 1300 Talley Road in Wilmington, Delaware. The SWPPP, SPCC, and training records were available on site. A review of the SWPPP found the plan had not been updated and certified since March 2003 although changes have occurred at the facility as recently as 2010 (see Exhibit 9 in Appendix 4), including installation of catch basin inserts, a Baysaver, and a biofilter strip at the foot of outfall TAL01 (see Photograph 4 in Appendix 5). An SPCC plan had been developed for the site due to the aboveground storage of fuel in excess of 1,320 gallons; however the SPCC plan had not been updated since 2007. SPCC plans reviews must be conducted every five years and the review documented per the requirements of 40 CFR Part 112.5(b).

On April 19, 2013, the EPA inspection team also visited DelDOT's Kiamensi Maintenance Yard located in area 11 of New Castle County at 815 Stanton Road in Wilmington, Delaware. The SWPPP, SPCC plan, and training records were available on site. A review of the SWPPP found the plan had not been updated and certified since July 2004 although changes have occurred at the facility as of December 2004 (see Exhibit 9 in Appendix 4), including installation of a wash pad with sediment screen (see Photograph 5 in Appendix 5), catch basin inserts, and wet stormwater pond #76 (see Photographs 6 through 9 in Appendix 5). An SPCC plan had been developed for the site due to the aboveground storage of fuel in excess of 1,320 gallons; however, the SPCC plan had not been updated since March 2007. SPCC plans reviews must be conducted every five years and the review documented per the requirements of 40 CFR Part 112.5(b).

On April 19, 2013, the EPA inspection team also visited DelDOT's Chapman Maintenance Yard located in area 13/14 of New Castle County at 39 East Regal Boulevard in Newark, Delaware. The SWPPP, SPCC plan, and training records were available on site. A review of the SWPPP found the plan had not been updated and certified since March 2003 although changes have occurred at the facility since 2007 (see Exhibit 9 in Appendix 4), including installation of a wash pad with sediment screen (see Photographs 10 and 11 in Appendix 5), vehicle wash water BMP with baffle (see Photograph 12 in Appendix 5), 18 catch basin inserts, wet stormwater pond #78 (see Photograph 13 in Appendix 5), and a Stormceptor<sup>®</sup> system. An SPCC plan had been developed for the site due to the aboveground storage of fuel in excess of 1,320 gallons; however, the SPCC plan had not been updated since March 2007. SPCC plans reviews must be conducted every five years and the review documented per the requirements of 40 CFR Part 112.5(b).

Observation 3: The EPA inspection team observed the following regarding spill prevention, materials management, and good housekeeping at the DelDOT maintenance yards and facilities.

At the Middletown facility, the EPA inspection team observed that the waste oil tank used to store waste oil removed from DelDOT vehicles was full. Oil was being temporarily stored in open top containers in the shop until the tank could be emptied (see Photograph 14 in Appendix 5). No floor drains were located near the containers; however, the shop had sloping floors. According to Mr. Bill Sweetman, the supervisor for the Middletown facility, the hauler had been called on Monday, April 15, 2013 but had not arrived as of Thursday, April 19, 2013. In addition, no spill kits were available in the shop.

The EPA inspection team observed evidence of a small diesel fuel spill at the fueling station (see Photographs 4 and 5 in Appendix 5) at the Middletown facility (see Photographs 15 and 16 in Appendix 5). An adjacent spill kit was open and its lid was broken. Water was present on top of the lid. A review of the Middletown facility's SWPPP, updated in April 2013 after EPA's inspection, did not list spills of diesel fuel as possibly impacting stormwater or the need to place a spill kit at the fueling station (see Exhibit 6 in Appendix 4).

During the site inspection of the Odessa yard, the EPA inspection team noted that 55-gallon drums of hydraulic oil were not stored in secondary containment, although they were stored within closed sheds. The EPA inspection team also noted there was a 55-gallon drum in the maintenance shed without a label. Although Mr. Troy Foraker, the facility superintendent, stated his employees would know what was in the drum, there were no markings to indicate its contents. A review of the Odessa yard's SWPPP, updated in April 2013 after EPA's inspection, does not

include secondary containment for stored petroleum products (see Exhibit 7 in Appendix 4).

At the Bear facility, the EPA inspection team observed spent 12-volt batteries that were stored near a storm drain (see Photograph 17 in Appendix 5). Additionally, at the fuel dispensing island, the lids on the spill kits were damaged.

Observation 4: The EPA inspection team observed vehicle/equipment wash water practices at five (5) of the DelDOT maintenance yards designed to discharge waste wash water through treatment trains into stormwater BMPs (i.e., ponds, swales, etc.) and the stormwater collection system.

On July 6, 2005, DelDOT submitted a “Statewide Vehicle Wash Water Practices for DelDOT Maintenance Yards” (Wash Water Report) to DNREC for approval (see Exhibit 10 in Appendix 4). This report outlines an alternative solution using a multiple BMP “treatment train” to deal with vehicle wash water. According to the report, all catch basins were retrofitted with Suntree<sup>®</sup> catch basin inserts. In addition, the report details BMPs chosen by DelDOT in the development of treatment trains at each maintenance facility.

A July 13, 2005 letter from Amber Moore, Environmental Scientist, Surface Water Discharges Section at DNREC, to Mr. Randall Cole, NPDES Program Manager at DelDOT, states that “the waste wash water generated from DelDOT’s vehicle washing activities is considered industrial wastewater as it could potentially impair surface water quality” (see Exhibit 10 in Appendix 4). The letter approved DelDOT’s proposed alternative solution to treat the wastewater generated from vehicle washing activities.

DelDOT completed the installation of a vehicle/equipment wash water treatment train at the Middletown maintenance yard in 2009. The wash pad includes a sediment screen prior to discharging the waste wash water to a wet pond (see Photographs 18 and 19 in Appendix 5). Site personnel stated that the wash pad was used to wash trucks and salt application equipment. During the inspection, the EPA inspection team observed a sheen on the surface of the pond, and dead vegetation surrounding the pond. According to the Wash Water Report, DelDOT proposed to “retrofit dry pond to a wet retention pond, and increase forebay area to enhance TSS and associated pollutant removal.” The EPA inspection team did not observe any BMP in the treatment train to remove oil and grease nor was one identified in the 2005 DelDOT report.

DelDOT completed the installation of a vehicle/equipment wash water treatment train at the Bear maintenance yard in 2008. The waste wash water discharges to the on-site stormwater collection system. The

stormwater collection system discharges to a biofiltration swale, which discharges to a wet pond. The wash pad is used to remove salt from salt trucks and to wash equipment that has transported soil. Personnel from the Bear maintenance yard have installed oil absorbent pigs and blankets in down-gradient storm drain inlets to capture any oils that may be washed off from the vehicles and equipment. The EPA inspection team observed sediment accumulation and dead vegetation around the biofiltration swale that collects waste wash water from the wash pad (see Photographs 20 and 21 in Appendix 5). Semi-annual wet weather outfall monitoring from August 2011 to March 2013 at the Bear Maintenance Yard show concentrations of total suspended sediment (TSS) above the benchmark value (see Exhibit 11 in Appendix 4). According to the Wash Water Report, “wash water will flow to a Suntree® catch basin insert, enter the closed drainage system where it will empty into vegetated swales with check dams before discharging to the wet retention pond.” The EPA inspection team did not observe check dams in the swales in the treatment train.

DelDOT completed the installation of a vehicle/equipment wash water treatment train at the Talley Maintenance Yard in 2010. High pressure washing occurs next to the maintenance building. The waste wash water flows to two (2) yard drains with catch basin inserts, then a Baysaver® used for oil and grease separation before discharging to Outfall #TAL01. There is a biofilter strip at the foot of Outfall #TAL01. Site personnel stated that detergents are not used during vehicle washing in this yard. According to the Wash Water Report, the Talley yard was being redesigned to prioritize stormwater management and address vehicle wash issues. Expected completion date was set for July 2008.

DelDOT completed the installation of a vehicle/equipment wash water treatment train at the Kiamensi maintenance yard in Area 11 in 2004. The wash pad is located in the rear of the yard between the salt barn and Stormwater Pond #76, which discharges through Outfall #320080402110632. Two catch basins to the pond were observed along the curblin downslope from the wash pad (see Photograph 5 in Appendix 5). Stormwater and/or wash water travelling along the curbside could enter the catch basin prior to treatment by the Suntree® inserts, thus circumventing any oil treatment (see Photographs 22 and 23 in Appendix 5). The pond has a forebay, which was cleaned out on April 16, 2013 (see Photographs 7 and 8 in Appendix 5). Site personnel stated that 80% of the vehicle/equipment washing occurs on this pad. The other 20% of the vehicle/equipment washing occurs on the paved area where the vehicles are stored. That waste wash water flows along the southern edge of the site where it enters a catch basin (see Photograph 24 in Appendix 5) near the vehicle fueling station. That catch basin also discharges into Stormwater Pond #76. Site personnel stated that detergents are not used during vehicle washing in this yard. Outfall #320080402110632 from Pond #76 is

sampled twice per year under DelDOT's wet-weather monitoring program. Semi-annual wet weather outfall monitoring from 2008 to 2013 at the Kiamensi Maintenance Yard show concentrations of sampled parameters below benchmark values including total petroleum hydrocarbons (see Exhibit 11 in Appendix 4). According to the Wash Water Report, all vehicle washing areas "drain to the back of the yard, enter catch basins fitted with Suntree<sup>®</sup> inserts, and then discharge to the wet retention pond."

There are two wash areas at DelDOT's Chapman facility. Wash area #1 is an enclosed wash area with an oil water separator (see Photograph 25 in Appendix 5). Wastewater from this operation is discharged into the sanitary sewer. DelDOT completed the installation of wash area #2, a vehicle/equipment wash water treatment train with sediment screen and wet pond at the Chapman maintenance yard in 2007. DelDOT personnel stated that salt trucks are washed on the concrete wash pad (see Photograph 26 in Appendix 5). Site personnel stated that detergents are not used during vehicle washing at this yard. According to DelDOT personnel, the sediment screen and wet pond were being overwhelmed by sediment, which required significant maintenance. To address this issue, DelDOT installed a new sediment basin to capture the waste wash water from the wash pad in June 2012. The waste wash water flows into a catch basin with Suntree<sup>®</sup> inserts and then into a sediment basin where it is detained to remove sediment using a baffle (see Photographs 12 and 27 in Appendix 5). According to DelDOT personnel, the sediment basin has not been cleaned out since construction in June 2012. Clean-out is scheduled when the baffle is half full, meaning sediment has reached midway on the second baffle board (see Photograph 28 in Appendix 5). The sediment basin discharges to a stormwater swale, which enters a culvert, and is piped under the yard to an outfall on the other side of the fence at the lighting laydown area (see Photographs 12, 29, 30, and 31 in Appendix 5 and Exhibit 12 in Appendix 4). According to Ms. Latonya Gilliam, NPDES Engineer, who conducts the on-site inspections at the yard, the outfall on the other side of the fence at the lighting laydown area has not been inspected since the installation of the wash pad in 2012 when the fence was removed. The EPA inspection team observed dead vegetation surrounding the sediment basin. The Wash Water Report states that the swale for wash area #2 will be regraded and refurbished to include check dams. The EPA inspection team did not observe checkdams in the swale. According to a discussion with Ms. Sandra Goodrow, DNREC, on July 18, 2013, DNREC was unaware of the changes and does not have a record of DelDOT submitting a revised plan for the changes made in 2012 to the treatment train at the Chapman yard.

Observation 5: Inspection of the salt storage barn at the Middletown facility found salt spilling from the main door and onto a partially paved apron (see Photograph 32 in Appendix 5) which was not under cover. Appendix H of

the SWPP&MP, Salt Management Plan for Maintenance Yards states in Section 2.2 “Solid salt stockpiles must not be exposed to rain or snow.”

Observation 6: A construction contractor was staging equipment and stockpiling soils at the Bear facility; however the soil stockpile was not stabilized (see Photograph 33 in Appendix 5). According to Mr. Wayne Anthony, the on-site contact for the Bear facility, the soil stockpile had been in its present location since January 2013. Also near the back of the facility, material from a contractor’s soil stockpile was present in a swale that discharged into the on-site stormwater pond (see Photograph 21 in Appendix 5).

Observation 7: The Bear facility has an open, grated stormwater collection pit located near a former vehicle and equipment wash rack. Flow from the collection pit goes through a discharge pipe, however no piping drawings are available for the pit due to its age, and therefore DelDOT is not sure where the pit discharges. Mr. Anthony explained that DelDOT has been conducting dye testing to determine where the pit discharges, but those tests were inconclusive at the time of EPA’s inspection. The open grated pit is located approximately 20 feet down-gradient from a garage where vehicle fluids are being stored (see Photograph 34 in Appendix 5)

DelDOT completed inspection reports for the maintenance facility and yard inspections conducted with the EPA inspection team. Copies of DelDOT’s inspection reports for the Middletown, Odessa, Bear, Talley, Kiamensi, and Chapman facilities, prepared by Ms. Marianne Walch and Ms. LaTonya Gilliam on April 19, 2013, are provided as Exhibit 13 in Appendix 4. Note that the inspection reports prepared by Ms. Walch or Ms. Gilliam may contain additional observations or areas requiring maintenance that are not listed in the observations above.

#### **Part 2.A.6: Illicit Dischargers and Improper Disposal**

The SWPP & MP shall be implemented in a manner consistent with the following requirements: The program shall include dry weather inspection and field screening activities to locate portions of MS4s with suspected illicit discharges and improper disposal. Follow-up activities to eliminate illicit discharges and improper disposal may be prioritized on the basis of magnitude and nature of the suspected discharge, sensitivity of the receiving waters, and/or other relevant factors. This program shall establish priorities and schedules for screening the entire MS4 at least once during the five-year term of this permit. Facility inspections may be carried out in conjunction with other programs, but must include random inspections for facilities not normally visited.

- a) Each co-permittee shall effectively prohibit through state, county or municipal statute or ordinance or similar means, the discharge of materials other than storm water to the MS4.
- b) Unless identified as a significant source of pollutants to waters of the State, the following non-storm water discharges need not be prohibited from entering the MS4, provided such sources are identified and appropriate control measures to minimize the impacts of such sources, are developed under the SWPP & MP:
  - 1. Water line flushing;
  - 2. Landscape irrigation;
  - 3. Diverted stream flows;

4. Rising groundwater;
  5. Uncontaminated groundwater infiltration to separate storm sewers;
  6. Uncontaminated pumped groundwater;
  7. Discharges from potable water sources;
  8. Foundation drains;
  9. Air conditioning condensate;
  10. Irrigation water;
  11. Springs;
  12. Water from crawl space pumps;
  13. Footing drains;
  14. Lawn watering;
  15. Individual residential vehicle washing;
  16. Flows from riparian habitats and wetlands;
  17. Dechlorinated swimming pool discharges;
  18. Street wash waters; and
  19. Discharges or flows from emergency fire fighting activities.
- c) Each co-permittee shall implement procedures to limit infiltration of seepage from sanitary sewers and to prevent (or require the operator of the sanitary sewer system to eliminate) discharges of dry and wet weather overflows from sanitary sewers into the MS4.
- d) The discharge or disposal of used motor vehicle fluids, household hazardous wastes, grass clippings, leaf litter, and domestic animal wastes into separate storm sewers shall be prohibited. The co-permittees shall promote – through education, public information, and other appropriate measures – the proper management and disposal of used motor vehicle fluids and household hazardous waste materials. The co-permittees shall coordinate such efforts with the Delaware Solid Waste Authority, the Department’s Division of Air and Waste Management and the Recycling Public Advisory Council. The co-permittees shall explore opportunities to facilitate existing recycling and household hazardous waste collection programs and identify ways to encourage more participation.
- e) Each co-permittee shall implement a program to reduce the discharge of floatables (e.g., litter and other human-generated solid refuse) to the maximum extent practicable. The floatables control program shall include source controls and, where necessary, structural controls.
- f) Each co-permittee shall require the elimination of illicit discharges and improper disposal practices as expeditiously as reasonably possible. Where elimination of an illicit discharge is not possible within 30 calendar days of identification of the source and party responsible for the illicit discharge, an expeditious schedule for removal of the discharge shall be developed and required of the party responsible for the illicit discharge. In the interim, the co-permittee shall require the operator of the illicit discharge to take all reasonable and prudent measures to minimize the discharge of pollutants to the MS4.
- g) The co-permittees shall maintain, and update as necessary, a list of discharges to the MS4 that have been issued a NPDES permit. The list shall include the name, location, and NPDES permit number for the discharger.

Observation 8: DelDOT conducted dry and wet weather screening of their outfalls in the first five years of the permit for illicit discharges (approximately 8,000 outfalls); however, they have discontinued routine annual screenings and

the permit was administratively extended for an additional 7 years. The illicit discharge program now focuses on responding to citizen complaints or observations made by DelDOT when conducting outfall reconnaissance as part of infrastructure maintenance. According to Ms. Marianne Walch, the random screening of outfalls, conducted by KCI, provides little benefit in discovering illicit discharges.

In addition, because screening is only completed if DelDOT observes issues when conducting outfall reconnaissance related to maintenance, previous illicit discharge locations are not being reinvestigated. Documentation provided by DelDOT for illicit discharges in New Castle County between 2008 and April 2012 shows that DelDOT distributed door hangers at 14 of the 32 illicit discharge locations (see Exhibit 14 in Appendix 4). For other locations where illicit discharges were confirmed, DelDOT either contacted Delaware DNREC or referred the issue to New Castle County without taking enforcement actions. DelDOT stated during the closing meeting with EPA on April 19, 2013 that if the new MS4 permit required on-going illicit discharge screening of outfalls, then DelDOT would reinstate the program. DelDOT's new permit, effective May 7, 2013, includes a requirement for an illicit discharge screening program where screening and inspection activities are conducted in areas with a high potential for illicit discharges and improper disposal.

#### **Part 2.A.9: Construction Site Runoff**

The SWPP & MP shall be implemented in a manner consistent with the following requirements: The co-permittees shall implement a program to reduce, to the maximum extent practicable, the discharge of pollutants from construction sites, including:

- (a) Requirements for the use and maintenance of appropriate structural and nonstructural best management practices to reduce pollutant discharges to the MS4 when under construction;
- (b) Procedures for site planning which incorporate considerations for potential short term and long term water quality impacts and which minimizes those impacts, to the maximum extent practicable;
- (c) Prioritized inspection of construction sites and enforcement of control measures;
- (d) Appropriate education and training measures for construction site operators; and,
- (e) Notification of all construction permit applicants of their potential responsibilities under the NPDES permitting program for construction site runoff.

Section VII.A of the SWPP&MP requires the installation and maintenance of all BMPs during inspection activities. Section VII.B of the SWPP&MP requires the Contractor's Certified Construction Reviewer (CCR) to conduct weekly E&S reviews jointly with a member of DelDOT's construction staff. Section VII.C of the SWPP&MP requires DelDOT to provide CCR training for DelDOT staff, consultants, and contractors.

Observation 9: In 2007, DelDOT revised the CCR requirement. According to their 2011 Annual Report, instead of the construction site contractor providing the CCR, DelDOT hired two consulting firms (URS and AECOM) to provide weekly inspection services. This revision was implemented to improve

compliance with the required weekly and rain event inspections and reporting. The consultant also has the authority to hire a third party contractor to correct erosion and sediment control (E&S) deficiencies.

The weekly inspections, required by Section VII.B of the SWPP&MP, are conducted by the consultant and attended by a representative from DelDOT and the construction site contractor. On April 18, 2013, the EPA inspection team observed the CCR, Mr. Jim D'Orazio of URS, conduct a routine inspection of the SR7–Newtown Road to SR273 construction project located on Bear-Christiana Road in Bear, Delaware. During the EPA inspection, Mr. D'Orazio noted several issues with the E&S controls, such as erosion control matting that needed to be trenched in, sparse seed and straw mulch coverage, inlets with missing or inadequate throat protection, and inlets with improperly positioned grates (see Exhibit 15 in Appendix 4). During the inspection, the contractor representative, Mr. Christopher Caruso of A-Del, was actively making corrections to controls as Mr. D'Orazio identified them, such as replacing missing inlet throat protection. The EPA inspection team observed the Gutterbuddies<sup>®</sup> used for throat protection were often down the street from the inlet, or scattered around the site.

According to inspection reports from the fourth quarter of 2012, URS inspectors identified problems that were not resolved per the timeframes provided in the inspection reports, such as missing stabilized construction entrances (SCE). Three missing SCEs were observed in the November 28, 2012 inspection report, at stations 81+75 LT, 92+00 LT, and 93+50 LT (see Exhibit 16 in Appendix 4). The inspection report required immediate correction. According to the E&S plans for this site, SCEs were required for two out of three of the locations identified in the inspection report (see Exhibit 17 in Appendix 4). The inspection report dated January 9 2013, stated that as of December 12, 2012, no SCEs had been installed; as of December 19, 2012, an SCE had been installed at 92+00 LT; and as of December 27, 2012, an SCE had been installed at 93+50 LT (see Exhibit 16 in Appendix 4). The inspection report stated that on January 3, 2013, the contractor and site representative stated that the SCE required at 81+75 LT would not be used and the area would be barricaded. The inspection report noted that the area had been barricaded as of January 9, 2013.

Inspection reports reviewed by the EPA inspection team indicate that many issues identified took approximately a month or more to be resolved, and recurred repeatedly throughout the life of the project. For example, the September 19, 2012 CCR report for station 95+50 50' LT, where there was a flared end section inlet that takes on flow from an outlet pipe, stated a section of reinforced silt fence (RSF) was undermined, that erosion rills were starting to form in the slope, and that sediment was present in the stream below (see Exhibit 16 in Appendix 4). The CCR recommended that the contractor repair the erosion rills, install rip rap down the slope, repair

the RSF, and remove the sediment from the stream and required correction by September 20, 2012. The October 24, 2012 CCR report noted that the rip rap was installed and that no sediment was observed in the stream on October 10, 2012 and that the RSF and erosion were repaired on October 24, 2012, and that these issues could be removed from the inspection report (see Exhibit 16 in Appendix 4). However, the same inspection report identified problems with the RSF being undermined and rill erosion at 95+25 to 95+50 50' to 75' LT and required correction by October 25, 2013. The CCR noted that the contractor fully repaired the RSF and installed matting to better control the erosion rills on November 21, 2012 (see Exhibit 16 in Appendix 4). The CCR noted on November 28, 2012 that the erosion matting was not installed correctly, and that the contractor needed to add staples and key in the matting at the top of the slope, requiring correction by December 5, 2012 (see Exhibit 16 in Appendix 4). The January 3, 2013, inspection report stated that there was no change in status as of December 12, 2012, staples were added as of December 19, 2012, and the matting installation was not corrected as of December 27, 2012 though work was not done in the area (see Exhibit 16 in Appendix 4). The report also stated that as of January 3, 2013, the contractor was actively working the area and that the matting would be properly installed once the work was complete. In the interim, the road and curb area was boxed out to limit concentrated flows from getting under the matting. In the report, the CCR stated he did not observe evidence of recent sediment flow onto the matting during the January 3, 2013 inspection and that the item would be removed from the report. During EPA's inspection on April 18, 2013, Mr. D'Orazio observed similar issues with the matting installation (missing staples and top of matting not keyed in) at station 112+25 LT (see Exhibit 15 in Appendix 4).

Additionally, during the EPA inspection of the SR-1/I-95 interchange on April 19, 2013, located on Christiana Stanton Road in New Castle, Delaware, the EPA inspection team observed that several areas throughout the site were not stabilized or only partially stabilized. (see Photographs 35 and 36 in Appendix 5). The CCR for the site, Mr. Scott Keefer of AECOM, stated that stabilization was not yet required for many of these areas because they have been disturbed within the past 14 days. However, the EPA inspection team observed rill erosion on an unstabilized slope (see Photograph 37 in Appendix 5), and sediment accumulated around inlets (see Photograph 38 in Appendix 5), in swales (see Photograph 39 in Appendix 5), around silt fence (see Photograph 40 in Appendix 5), and outside of outfalls (see Photograph 41 in Appendix 5). The EPA inspection team observed an unstabilized swale that Mr. Keefer and Mr. Rob McCleary stated should have stabilized (see Photographs 42 and 43 in Appendix 5). Mr. McCleary is the Assistant Director of Engineering Support for DelDOT and oversees the NPDES Construction Permit Compliance branch of the Division of Transportation Solutions (DOTS).

Observation 10: DelDOT does not provide E&S training to construction operators, but all construction site contractors are required to come onto a project with blue or gold card certification from Delaware DNREC. For the SR7–Newtown Road to SR273 construction project, only Mr. Dave Lafferty (URS) and Mr. Herb Monsalud (DelDOT) attended the E&S control preconstruction meeting. Representatives from the site contractor, A-Del, were not present at the preconstruction meeting (see Exhibit 18 in Appendix 4). Additionally, the 2012 CCR reports indicated the construction site contractor took approximately a month or more to be resolve many of the issues identified by the CCR, and that the issues recurred repeatedly throughout the life of the project (see Observation 9).



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

FEB 04 2014

Mr. Randy Cole, Program Manager  
Delaware Department of Transportation  
800 Bay Road  
Dover, DE 19903

Re: Opportunity to Confer and Resolve Clean Water Act Municipal Separate Storm Sewer System Violations

Dear Mr. Cole:

This letter is in reference to an investigation the United States Environmental Protection Agency, Region III, (EPA or Agency) conducted with regard to Delaware Department of Transportation (DelDOT) implementation of the requirements of the permit for the discharges from its municipal separate storm sewer system (MS4). As you are aware, EPA and its contractors conducted an inspection of DelDOT's MS4 program on April 18 and 19, 2013. Based on the information currently available to EPA, EPA believes that DelDOT's MS4 program was not compliant with its National Pollutant Discharge Elimination System (NPDES) Permit DE 0051071.

**CWA Violations Identified by EPA**

Section 301 of the CWA, 33 U.S.C. § 1311, prohibits the discharge of any pollutant from a point source to waters of the United States except in compliance with, among other things, a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit.

EPA authorized the Delaware Department of Natural Resources and Environmental Control (DNREC) to issue NPDES permits in April 1974 under Section 402(b) of the Act, 33 U.S.C. § 1342(b). Permit DE 0051071 (the MS4 Permit) was issued by DNREC to DelDOT on May 1, 2001 to govern the discharge of storm water through the DelDOT's MS4. In addition, discharges of stormwater from certain DelDOT facilities are covered by DNREC's General Discharge Permit for Stormwater Associated with Industrial Activities.

As a result of the April 2013 inspection, EPA has identified the following violations of the MS4 Permit:

Failure to Develop and Maintain Stormwater Pollution Prevention Plans (SWPPPs) for DelDOT Maintenance Facilities: According to Part II.A.3 of the permit, DelDOT “shall operate and maintain public streets, roads, and highways, in such a manner to reduce, to the maximum extent practicable, the discharge of pollutants. This includes implementing programs ... to reduce contaminated storm runoff (i.e., manage and minimize any transport of pollutants) associated with road repair and maintenance activities (i.e., practices to address spill prevention, material management and good housekeeping).” Section XII.A. of the SWPP&MP requires DelDOT to “Develop SWPPPs for all maintenance facilities as per General Permit for Industrial Activities and... Update Pollution Prevention Plans (PPPs) as necessary, including updated site maps.” The EPA inspection team inspected several DelDOT maintenance facilities as part of their inspection. SWPPPs were present at all of the maintenance facilities inspected and the inspection team noted that the SWPPPs for the Middletown, Odessa, Bear and Talley maintenance facilities had last been updated in 2003 even though several changes were made to these facilities and personnel identified in the SWPPP often no longer worked within the maintenance facilities.

Failure to Manage and Minimize the Transport of Pollutants Associated with Road Repair and Maintenance Activities: According to Part II.A.3 of the permit, DelDOT “shall operate and maintain public streets, roads, and highways, in such a manner to reduce, to the maximum extent practicable, the discharge of pollutants. This includes implementing programs ... to reduce contaminated storm runoff (i.e., manage and minimize any transport of pollutants) associated with road repair and maintenance activities (i.e., practices to address spill prevention, material management and good housekeeping).” In 2005, DNREC approved DelDOT’s treatment train for its vehicle wash facilities at several DelDOT maintenance yards. At the Kiamensi facility, washwater is intended to be treated for pollutants associated with oil via a storm drain inlet insert. However, during EPA’s inspection, the inspectors found that both washwater and stormwater could easily circumvent the storm drain inlet insert (photograph 22, Appendix 5) and discharge untreated washwater into the stormwater pond and eventually surface waters.

Failure to Manage and Minimize the Transport of Pollutants Associated with Road Repair and Maintenance Activities: According to Part II.A.3 of the permit, DelDOT “shall operate and maintain public streets, roads, and highways, in such a manner to reduce, to the maximum extent practicable, the discharge of pollutants. This includes implementing programs... to reduce contaminated storm runoff (i.e., manage and minimize any transport of pollutants) associated with road repair and maintenance activities (i.e., practices to address spill prevention, material management and good housekeeping).” Appendix H of the SWPP&MP, Salt Management Plan for Maintenance Yards states in Section 2.2 “Solid salt stockpiles must not be exposed to rain or snow.” During EPA’s inspection of the salt storage barn at the Middletown facility, the inspectors found salt spilling from the main door and onto a partially paved apron (Photograph 32 in Appendix 5) which was not under cover and therefore exposed to rain and snow.

Failure to Conduct Appropriate Training and Educational Opportunities for Site Operators: Part II.A.9.d of the permit requires DelDOT to have “appropriate education and training measures for construction site operators.” Section VII.C of the SWPP&MP requires DelDOT “Provide CCR training for DelDOT staff, consultants and contractors.” During EPA’s inspection, the inspectors found that DelDOT does not provide E&S training to construction operators and relies on DNREC to provide annual CCR training, but all construction site contractors are required to come onto a project with blue or gold card certification from Delaware DNREC.

Failure to Properly Enforce Construction Site Inspection Findings: Part II.A.9.c of the permit requires DelDOT to conduct a “prioritized inspection of construction sites and enforcement of control measures.” Section VII.A of the SWPP&MP requires the “installation and maintenance of all BMPs during construction activities.” Construction site inspection reports reviewed by the EPA inspection team indicate that many deficiencies identified in construction site inspections took approximately a month or more to be resolved, and recurred repeatedly throughout the life of the construction site.

I am enclosing two administrative documents as part of DelDOT’s opportunity to confer with EPA and negotiate an administrative resolution of this case: a proposed Administrative Order on Consent (AOC), which, if signed will address the violations alleged by EPA, and a proposed Consent Agreement and Final Order (CAFO), which assesses a civil penalty for the violations alleged by EPA.

If EPA were unilaterally pursuing an administrative action, it could propose a penalty pursuant to Section 309(g) of the Clean Water Act of up to \$177,500. However, EPA is providing you with an opportunity to confer with EPA and reach a negotiated resolution prior to the filing of a formal administrative complaint based on the two enclosed documents.

The DelDOT must respond to this letter in writing within **fourteen (14) calendar days** of receipt of this letter, if DelDOT is interested in resolving this matter prior to the filing of a complaint, as described above. EPA is prepared to meet with representatives of DelDOT to further discuss the violations, potential penalties and settlement. Prior to the close of that first meeting, EPA expects that DelDOT will advise the Agency whether it is willing to make the required commitment to settle this case before litigation. In addition, a firm schedule for any continuing negotiations must be established prior to, or during, that first meeting and settlement negotiations resulting in a signed Consent Agreement and Final Order (CAFO) and an AOC must be completed within **ninety (90) calendar days** of receipt of this letter. Any final settlement and CAFO will be subject to final approval by the Regional Administrator for EPA Region III or his designee.

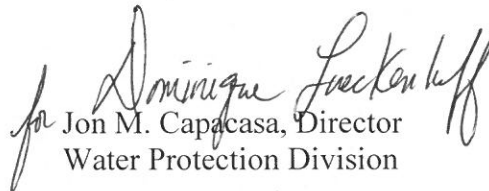
Please note that to the extent there are ongoing violations of DelDOT’s NPDES permit, these violations should be corrected immediately. EPA specifically reserves the right to use any and all enforcement tools at its disposal to address past and/or ongoing violations at your facility regardless of any ongoing discussions in response to this Letter to Show Cause.

Please direct your written response as well as all questions and communications with respect to any matters addressed in this letter to the attorney assigned to represent EPA:

Robert Smolski (3RC20)  
Senior Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103  
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I strongly encourage you to give this matter your full consideration. Should DelDOT and EPA fail to reach a settlement agreement in this matter, EPA reserves the right to seek the maximum allowable penalty at law in litigation.

Sincerely,

  
for Jon M. Capacasa, Director  
Water Protection Division

Enclosure

cc: Robert Smolski (EPA)  
Peter Gold (EPA)